UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Entrega Gas Pipeline Inc. | Docket Nos. CP04-413-001
CP04-414-001
CP04-415-001

ORDER ON REHEARING

(Issued December 29, 2005)

1. On September 8, 2005, Entrega Gas Pipeline Inc. (Entrega) filed a request for clarification or, alternatively, rehearing and BP America Production Company and BP Energy Company (jointly BP) filed a request for rehearing of the Commission's August 9, 2005 Order in this proceeding authorizing Entrega to construct and operate a 328-mile pipeline system from the Piceance Basin in Colorado to the Cheyenne Hub in Wyoming to provide up to 1,500,000 Dth per day of firm natural gas transportation service for an affiliate, EnCana Marketing (USA) Inc. (EnCana Marketing).[1]

2. For the reasons discussed herein, we will grant Entrega's request for rehearing[2] and deny BP's request for rehearing.

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[1] *Entrega Gas Pipeline Inc.*, 112 FERC ¶61,177 (2005). On September 23, 2005, Entrega filed a response to BP's request for rehearing. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits responses unless otherwise ordered by the decisional authority. We will accept Entrega's response because it has provided information that assisted us in our decision-making process.

[2] Entrega seeks modification of a substantive condition imposed by the August 9 Order. Therefore, the request goes beyond the scope of clarification.

## I. **Background**

3. Entrega is a wholly-owned indirect subsidiary of EnCana Corporation. Under the certificate granted by the Commission's August 9 Order, Entrega is authorized to phase the construction of its pipeline project.

4. In Phase I, Entrega will construct approximately 136 miles of 36-inch diameter pipeline extending from the Meeker Hub in Colorado to Wamsutter in Wyoming and approximately 191 miles of 42-inch diameter pipeline extending eastward from Wamsutter to the Cheyenne Hub in Colorado. Entrega will also construct delivery/receipt meter stations at interconnections with existing pipelines at the beginning of Entrega's system at the Meeker Hub, at roughly the middle of the system in Wamsutter and at the end of the system at the Cheyenne Hub.

5. The Phase I pipeline facilities will have a capacity of 750,000 Dth per day. The total estimated cost of the Phase I facilities is $574,980,000. Entrega projects an in-service date in January 2006 for the Phase I facilities.

6. In Phase II, Entrega is authorized to construct the 15,400 horsepower Meeker Hub Compressor Station; the 30,000 horsepower Bighole Compressor Station in Moffat County, Colorado; and the 20,620 horsepower Wamsutter Compressor Station. The Phase II compression facilities will double the capacity of Entrega's pipeline, increasing it from 750,000 Dth per day to 1,500,000 Dth per day.

7. The Phase II compression facilities have a projected April 2007 in-service date. The estimated cost of the Phase II facilities is $89,045,000, bringing the total cost of Entrega's project to approximately $664,025,000.

8. Entrega's cost-based recourse rates for firm Phase I service are calculated using the Phase I cost estimate and billing determinants of 750,000 Dth per day, *i.e.*, the entire Phase I capacity. Phase II firm service recourse rates are calculated using the total cost (Phase I and II) of the project and billing determinants of 1,500,000 Dth per day, *i.e.*, the entire Phase I and Phase II capacity.

9. Following a three-week open season in June 2004, Entrega entered into a precedent agreement with its affiliate EnCana Marketing to initially transport 500,000 Dth per day for 15 years. The precedent agreement provides for a negotiated rate lower than the recourse rate and the option for EnCana Marketing to increase firm service by up to 1,000,000 Dth per day for a total of up to 1,500,000 Dth per day, which would account for all of Entrega's firm Phase I and II capacity. EnCana Marketing may exercise this option by means of multiple notices requesting service "ramp-ups", provided that all such notices are submitted within nineteen calendar months of Entrega's commencement of Phase I service. Taking into account the time between the projected in-service dates for

the Entrega's Phase I pipeline facilities and Phase II compression facilities, the precedent agreement provides that Entrega will use reasonable efforts to provide any requested ramp-up of service within eighteen months.

## II. Motion Seeking Late Intervention

10. Notice of Entrega's application was published in the *Federal Register* on October 5, 2004.[3] The notice prescribed October 19, 2004 as the due date for comments and motions to intervene.

11. On December 15, 2005, New Jersey Resources Corporation (New Jersey Resources) filed a motion seeking late intervention. New Jersey Resources states that it provides retail and wholesale energy services to customers from the Gulf Coast to New England, and that its largest subsidiary is New Jersey Natural Gas Company, a local natural gas distribution utility. New Jersey Resources further states that it is currently negotiating with Entrega for gas transportation service but only recently determined that it is interested in such service. New Jersey Resources' pleading does not include any substantive comments or raise any issues with respect to Entrega's proposal.

12. When late intervention is sought after the issuance of an order disposing of an application, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, a movant bears a higher burden to demonstrate good cause for the granting of such late intervention. The Commission finds that New Jersey Resources has not met that burden. Therefore, we will deny its motion for late intervention.[4]

## III. Entrega's Request For Rehearing

### Crediting of Revenues from Interruptible Services

#### Entrega's Arguments

13. In its application, Entrega proposed, consistent with the terms of its precedent agreement with EnCana Marketing, that EnCana Marketing receive an allocable share, based on the percentage of Entrega's firm capacity under contract to Encana Marketing, of 50 percent of Entrega's interruptible service revenues, net of variable costs. Entrega proposed that it retain the remaining 50 percent.

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[3] 69 *Fed. Reg.* 59,585 (Oct. 5, 2005).

[4] *See, e.g., North Baja Pipeline LLC,* 99 FERC ¶ 61,028 at pp. 61,109-10 (2002).

14. In our August 9 Order, we stated that, if Entrega credits interruptible service revenues instead of allocating costs to interruptible service, it must revise its tariff to include a mechanism to credit 100 percent of its interruptible transportation (IT), parking and lending (PAL) and automatic parking and lending (APAL) revenues, net of variable costs only, to its firm and interruptible cost-based recourse rate shippers.[5] On rehearing, Entrega states that it plans to credit interruptible revenues. Entrega further states that, if it enters into agreements with any firm or interruptible shippers that will pay Entrega's cost-based recourse rates, those shippers will be credited 100 percent of their allocable shares of Entrega's interruptible revenues, consistent with Commission policy.

15. Entrega emphasizes, however, that it currently has only one precedent agreement, *i.e.*, its agreement with Encana Marketing under which Encana Marketing will pay a negotiated rate, not the cost-based recourse rate, for firm service. Entrega states that its precedent agreement provides for EnCana Marketing to receive 50 percent of its allocable share of Entrega's interruptible revenues and for Entrega to retain the remaining 50 percent. Entrega also states that its open season materials and Article 20.4 of the General Terms and Conditions of its *pro forma* tariff provided for Entrega and any firm shipper paying a negotiated rate to agree to the shipper being credited an amount equal to 50 percent of its allocable share of net interruptible service revenues.[6]

**<u>Commission Response</u>**

16. In *Cheyenne Plains Gas Pipeline Company, L.L.C. (Cheyenne)*, we recently authorized Cheyenne to enter into agreements to credit firm shippers paying negotiated rates with 50 percent of their allocable shares of net interruptible revenues. We concluded that there was “no reason to foreclose Cheyenne Plains and its negotiated rate shippers from agreeing to such a measure.[7] We reach the same conclusion here. Entrega

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[5] 112 FERC ¶ 61,177 at P 51. Entrega notes that, in addition to its interruptible services under Rate Schedules IT, PAL and APAL, its interruptible services will include Authorized Overruns under Rate Schedule FT.

[6] Original Sheet No. 254.

[7] 108 FERC ¶ 61,052 at P 12 (2004), *clarified and reh’g granted on other grounds*, 109 FERC ¶ 61,291 (2004). *See also Greenbrier Pipeline Company, L.L.C.*, 101 FERC ¶ 61,122 at P 25 (2002), *clarified on other grounds*, 103 FERC ¶ 61,024 (2003), *reh'g denied in part and dismissed in part*, 104 FERC ¶ 61,145 (2003), *reh'g denied*, 105 FERC ¶ 61,188 (2003). In *Greenbrier Pipeline Company, L.L.C.*, the Commission approved, without discussion, a tariff provision under which firm shippers paying negotiated rates, but not shippers under capacity release agreements, could receive credits of interruptible revenues.

and Encana Marketing negotiated a precedent agreement that provides for Encana Marketing to receive 50 percent of an allocable share of Entrega's net interruptible revenues. Entrega's open season materials and Article 20.4 of the General Terms and Conditions of its *pro forma* tariff provided for Entrega and any shipper paying a negotiated rate for firm service to agree that the shipper will be credited an amount equal to 50 percent of its allocable share of net interruptible service revenues.

17. Based on the above considerations, we will grant rehearing of our August 9 Order to permit Entrega and any shipper that will pay a negotiated rate for firm service to agree that (1) the negotiated-rate shipper will be credited an amount equal to 50 percent of its allocable share of net interruptible service revenues, including revenues from services under Rate Schedules IT, PAL, APAL and, as noted by Entrega, Authorized Overruns under Rate Schedule FT, and (2) Entrega will retain the remaining 50 percent of that negotiated rate shipper's allocable share of interruptible revenues. Since we are granting rehearing on this issue, Entrega shall revise its tariff accordingly with respect to interruptible revenue sharing with negotiated rate shippers with firm service contracts.[8] Entrega's crediting proposal is otherwise consistent with Commission policy, since Entrega states that its tariff will include a mechanism to credit its firm and interruptible cost-based recourse rate shippers with 100 percent of net revenues from interruptible services, including parking and lending, automatic parking and lending, and authorized overruns under Rate Schedule FT.

## IV. <u>BP's Request For Rehearing</u>

### <u>Postage Stamp Rates versus Distance-Based or Zoned Rates</u>

#### <u>BP's Arguments</u>

18. BP states that the Commission erred by failing to require that Entrega adopt distance-based or zoned rates with reference to Wamsutter, which will be close to the mid-point of Entrega's 338-mile pipeline system. BP reiterates that Entrega's system will have mid-system receipt and delivery points at Wamsutter, where Entrega's system will interconnect with several pipelines. BP argues that a shipper having gas delivered by another pipeline to Entrega's system at Wamsutter should not have to pay Entrega rates

[8] On November 16, 2005, Entrega filed actual tariff sheets in Docket No. CP04-414-002 in compliance with the terms of August 9 Order, including the condition that Entrega file revised tariff provisions, if it chose to credit interruptible service revenues, to include a mechanism to credit 100 percent of its net interruptible service revenues to its firm and interruptible cost-based recourse rate shippers. The Commission has not yet acted on Entrega's November 16 tariff filing.

that include construction, fuel and other costs associated with Entrega's upstream pipeline facilities or its compression facilities, all of which will be at or upstream of Wamsutter. Similarly, BP argues that a shipper using only Entrega's upstream facilities to deliver gas to another pipeline at Wamsutter should not have to pay rates that include costs associated with Entrega's pipeline facilities downstream of Wamsutter.

19. BP also notes that there is significant gas production in the Wamsutter area, and several pipelines will be able to transport this production to interconnections with Entrega at Wamsutter. BP asserts that it is in view of these factors that Entrega is constructing this project with larger diameter (42-inch) pipe downstream of Wamsutter so that in the future it can take advantage of cheap expansibility by adding compression downstream of Wamsutter. BP argues that any such future expansion program would be undertaken so that Entrega could increase receipts at Wamsutter. Therefore, BP argues that this potential development supports its argument that Entrega should be required to have rates that are distance-based or zoned with reference to Wamsutter.

20. BP emphasizes that the Commission has long recognized that the distance factor is the prime determinant of the cost of rendering service and, therefore, that rates should be distance-based or zoned unless other circumstances -- such as multi-directional flow patterns on the pipeline, frequent flow reversals or heavy reliance on deliveries by displacement -- are so significant that they outweigh the importance of the length of the transmission system and nominal distances between receipt and delivery points.[9] BP also emphasizes that section 284.10(c)(3) of the Commission's regulations states that open-access pipelines' rates "must reasonably reflect any material variation in the costs of providing the service due to … (ii) The distance over which the transportation is provided."[10]

21. BP argues that, unless Entrega is required to have distance-based rates, shippers using Entrega's entire system will be subsidized by customers using only Entrega's upstream facilities or only its downstream facilities. BP states that it did not bid on Entrega's capacity during the open season because Entrega's proposed postage stamp rates will unfairly burden any shipper using capacity that either terminates or originates at Wamsutter in the middle of Entrega's system.

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[9] *Citing Northern Natural Gas Company,* 14 FPC 11 at p. 24 (1955), *aff'd sub nom. Interstate Power Company v. FPC,* 352 U.S. 967 (1057), and *Williams Natural Gas Company,* 41 FERC ¶ 61,037 at p. 61,099 (1987).

[10] 18 C.F.R. § 284.10(c)(3) (2005).

22. BP states that several pipelines will interconnect with Entrega's system at Wamsutter, and it will be possible for substantial supplies to be delivered to and received from those pipelines at that location. BP notes that the Commission has defined a market center or hub as "an area where gas purchases and sales occur at the intersection of different pipelines"[11] and has stated that market centers "are likely to develop in areas where several pipelines come together, or where a storage field is shared by more than one pipeline."[12]

23. BP asserts that aggregate pipeline capacity through Wamsutter already exceeds 4,000,000 Dth per day. BP also notes the recently approved Wyoming Interstate Company project which will be capable of delivering 350,000 Dth per day from the Greasewood Hub in Rio Blanco County, Colorado, to Wamsutter. Emphasizing that Entrega's project will add another 1,500,000 Dth per day of capacity at Wamsutter, BP argues that the Commission can ensure that Wamsutter becomes a significant market center by rejecting Entrega's postage-stamp rates on rehearing and instead requiring that Entrega have distance-based or zone rates. BP also emphasizes that section 284.7(b)(3) of the Commission's regulations states than an open-access pipeline "may not include in its tariff any provision that inhibits the development of market centers."[13]

24. BP states that our August 9 Order incorrectly indicated that Entrega and EnCana Marketing already have an agreement under which EnCana Marketing will take the full 1,500,000 Dth per day capacity over the entire length of the pipeline after the Phase II compression facilities are placed in service. BP points out that presently EnCana Marketing has only committed to initial transportation capacity of 500,000 Dth per day with an option to acquire an additional 1,000,000 Dth per day. Thus, BP asserts that the Commission relied on an erroneous finding -- *i.e.*, that EnCana Marketing has already contractually committed to taking all of Entrega's capacity -- in concluding in the August 9 Order that there was no reason for requiring distance-based or zoned rates.

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[11] 18 C.F.R. § 284.1(c) (2005).

[12] *Texas Eastern Transmission Corporation*, 62 FERC ¶ 61,015 at p. 61,095 (1993).

[13] 18 C.F.R. § 284.7(b)(3) (2005).

**Entrega's Answer**

25. Entrega reiterates that it presently has only one firm customer, EnCana Marketing, which wants service over the entire length of Entrega's pipeline, not just to or from Wamsutter. Further, Entrega asserts that Wamsutter does not presently operate as a market center. Athough Entrega does not dispute the presence of intersecting pipelines and supply at Wamsutter, Entrega states that BP has not demonstrated that Wamsutter is an active and liquid trading center. In any event, Entrega argues that it should not be required to redesign its rate structure to promote the development of a market center that may or may not exist for use by shippers that may or may not materialize in the future to seek service over only part of Entrega's system.

**Commission Response**

26. To encourage the construction of needed infrastructure, the Commission permits project sponsors flexibility in designing new pipeline projects. That flexibility extends to the design and structure of a new pipeline's initial section 7 rates.[14] While BP is correct that section 284.10(c)(3) of the Commission's regulations states that open-access pipelines' rates must reasonably reflect any material variation in the costs of providing the service due to the distance over which the transportation is provided, this does not mean that rates must reflect actual mileage used.[15] Further, we explained in our August 9 Order that the Commission has no hard and fast policy based on the length of a unidirectional pipeline such as Entrega's to determine when distance-based rates will be required.[16] However, it is significant that Entrega's pipeline will be relatively short, its entire 338-mile system being shorter than a single zone of some larger pipelines with

[14] 112 FERC ¶ 61,177 at P 41.

[15] *Portland Natural Gas Transmission System (Portland Natural)*, 80 FERC ¶ 61,134 at p. 61,451 (1997) (Commission cited unzoned 251-mile and 271-mile pipeline systems in course or rejecting argument that Portland Natural should be required to divide its 243-pipeline system into a 142-mile zone and 101-mile zone.)

[16] 112 FERC ¶ 61,177 at P 41. However, the Commission has stated that "typically, shorter systems are not required to have zoned rates." *Maritimes & Northeast Pipeline et al*., 84 FERC ¶ 61,130 at p. 61,686 (1998).

zoned rates.[17] Further, there are pipelines with postage stamp rates that have significantly larger systems than Entrega's 338-mile system.[18]

27. While distance-based rates may in some cases better promote development of market centers, we explained in our August 9 Order that postage stamp rates also can facilitate the development of market centers and competition because shippers have access to secondary points and can release capacity between various points on the system, rather in just a single zone. We also explained in our August 9 Order that any firm shipper on Entrega's system will have the right to segment its service entitlements, which will provide flexibility to accommodate participants in the secondary market and the interests of short-haul shippers.[19] In view of these considerations, the August 9 Order found that Entrega's postage stamp rate design is consistent with Commission policies to promote greater access to new gas supplies and comparable to the rate structures that have been approved for other pipelines in the western United States which are similar to Entrega's 338-mile, unidirectional system.[20]

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[17] For example, Great Lakes Gas Transmission Limited Partnership operates with rate zones that range from 233 miles to 416 miles. 88 FERC ¶ 61,260 at p. 62,334 (1996).

[18] For example, Kern River Gas Transmission Company's 700-mile pipeline extending from Wyoming to California was originally certificated in 1990 to operate with postage stamp rates and continues to do so today. We also note that Wyoming Interstate Company, while only 291 miles long, has Wamsutter as an intermediate point on its system, with supply sources both upstream and downstream of Wamsutter, and has postage stamp rates.

[19] 112 FERC ¶ 61,177 at P 43.

[20] *Id*. at P 41. Other Rocky Mountain, unidirectional pipelines of similar size (average length of 335 miles) for which the Commission has approved postage stamp rates include Cheyenne Plains Gas Pipeline Company (380-mile line flowing gas from Cheyenne Hub in northwestern Colorado to a terminus in southwestern Kansas); TransColorado Gas Transmission (236-mile line flowing gas from Greasewood, Colorado to the Blanco Hub in San Juan County, New Mexico); Wyoming Interstate Corporation (291-mile line flowing gas from western Wyoming to the Cheyenne Hub in northeastern Colorado); and Trailblazer Pipeline (436-mile line flowing gas from an interconnect with Wyoming Interstate Corporation near Rockport, Colorado to an interconnect with Natural Gas Pipeline Company of America and Northern Natural Gas Company at Beatrice, Nebraska).

28. Emphasizing that EnCana Marketing presently has contractually committed only to firm capacity of 500,000 Dth per day, BP argues that we should require distance-based or zoned rates in view of the remaining Phase I capacity of 250,000 Dth per day and the Phase II capacity of 1,000,000 Dth per day. However, BP's argument fails to recognize that EnCana Marketing holds the option to increase service to up to 1,500,000 Dth per day. If EnCana Marketing fully exercises its option, it will have all of Entrega's firm Phase I and II capacity over the entire 338-mile system. Thus, EnCana Marketing's actions are likely to obviate any reason for distance-based or zoned rates.

29. In the future, when operating data and information regarding Entrega's system is available, the development of intermediate markets, system expansions and changes in the utilization of Entrega's pipeline system may be material factors in determining whether postage stamp rates should be discontinued. At this time, however, BP's arguments in this regard are premature and speculative.[21]

30. We note, however, that our August 9 Order includes a condition requiring Entrega to file a cost and revenue study at the end of its first three years of actual operation.[22] The study must include both Phase I and Phase II operations to justify Entrega's cost-based firm and interruptible recourse rates approved in this certificate proceeding as initial section 7 rates. Issues regarding the need for distance-based or zoned rates can be raised and best explored after Entrega files its cost and revenue study based on three years of operation.[23] Pending such review, we will not require Entrega to revise its rate structure to implement zoned rates for its initial section 7 services, thereby eliminating its

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[21] *See Greenbrier Pipeline, L.L.C. (Greenbrier)*, 103 FERC ¶ 61,024 at P 43 (2003) (rejecting the argument that Greenbrier be required to implement distance-sensitive rates since Greenbrier's initial shippers would be using all of its 279-mile proposed pipeline system).

[22] 112 FERC ¶ 61,177 at Ordering Paragraph (C) (2005).

[23] In certificating the pipeline system proposed by Wyoming-California Pipeline Company (WyCal), the Commission stated that mileage-based rates would not be meaningful until such time that WyCal had capacity contracted to shippers receiving and delivering at intermediate points along its system and, therefore, that WyCal's initial section 7 rates did not need to be distance-based. The Commission acknowledged, however, that the advisability of requiring mileage-based rates could be an issue after WyCal had commenced service and a sufficient amount of operational experience had been gained. 44 FERC ¶ 61,001 at p. 61,007 (1988).

discretion to decline offers for service only to or from Wamsutter at a lower, zone rate.[24] While the Commission seeks to encourage the development of market centers, Entrega is correct that the Commission only requires that an open-access pipeline "not include in its tariff any provision that inhibits the development of market centers."[25] Further, in considering whether a new pipeline should be required to adopt distance-based or zoned rates in order to promote the development of market centers, the Commission will take into consideration whether such a rate structure could prevent the pipeline from recovering the costs of a project that the Commission has found to be required by the public convenience and necessity.[26]

**Debt/Equity Ratio for Rate Design Purposes**

**Arguments on Rehearing**

31. BP states that the Commission erred by approving use of the 65 percent equity ratio of Entrega's parent, EnCana Corporation (EnCana), in developing Entrega's rate of return, instead of a 50 percent equity ratio. BP states that EnCana's 65 percent equity capital structure is anomalous compared to pipelines because it reflects EnCana's operations as an oil and gas producer, rather than a pipeline operator. BP states that a 50 percent equity ratio is more appropriate because it is the average equity ratio of the proxy group endorsed by the Commission in *B-R Pipeline Company*.[27] Entrega argues in

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[24] As stated above, that Entrega's approved cost-based recourse rates for firm Phase I service are calculated using the billing determinants reflecting the entire Phase I capacity (750,000 Dth per day) and its approved Phase II firm service recourse rates are calculated using billing determinants reflecting the entire Phase I and II capacity (1,500,000 Dth per day).

[25] 18 C.F.R. § 284.7(b)(3) (2005).

[26] The circumstances in this case are materially different from those in *NorAm Gas Transmission Company v. FERC (NorAm v. FERC)*, 148 F.3d 1158 (1998), and *Iroquois Gas Transmission System, L.P. (Iroquois).* Those proceedings involved pipelines that already had rate zones, and the issues were whether costs had been properly allocated among the zones or between production and market areas. In this proceeding, Entrega has proposed a single zone for its new 338-mile pipeline and, at present, has only one shipper, which will use the entire length of the pipeline and has the option of reserving all of its capacity.

[27] *Citing B-R Pipeline Company*, 105 FERC ¶ 61,025 at P 17 and P 38 (2003).

its answer that its proposed 65 percent equity ratio is not anomalous when compared to the average 50 percent equity ratio of the proxy group relied upon the Commission in *B-R Pipeline Company*.

**Commission Response**

32. As explained in the August 9 Order, the Commission's policy in developing a pipeline's allowable rate of return is to use the pipeline's own capital structure or, if the pipeline does not provide its own financing, to use the actual capital structure of the pipeline's parent or other entity that does the financing for the regulated pipeline.[28] The Commission employs a hypothetical capital structure only if the actual capital structure of the entity providing the financing is anomalous relative to the capital structures of the publicly traded proxy companies used in the discounted cash flow (DCF) analysis or compared to the capital structures approved for other regulated pipelines.

33. Entrega is entirely owned by its parent EnCana, which has provided the capital for the construction of Entrega's pipeline. Therefore, the August 9 Order found that it is appropriate to use EnCana Corporation's capital structure in determining an appropriate rate of return for Entrega. While EnCana is an oil and gas producer, its capital structure with a 65 percent equity ratio is not anomalous when compared with those the Commission has approved in other cases.[29] Moreover, while utilization of EnCana's capital structure results in Entrega's having a relatively thick (65 percent) equity ratio, Entrega's proposed 12 percent rate of return on equity is significantly lower than the equity returns we have approved recently for several other new pipeline companies, as discussed below. In view of these considerations, we are affirming the August 9 Order's approval of Entrega's proposed capital structure in the development of its initial rates.

**Rate of Return on Equity**

**Arguments on Rehearing**

34. BP states that if a 65 percent equity ratio is used to develop Entrega's rates, the Commission should make a downward adjustment in the equity return, as it did in

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[28] *See B-R Pipeline Co.*, 105 FERC ¶ 61,025 at P 17 and P 38 (2003); *Energy West Development, Inc.*, 103 FERC ¶ 61,015 at P 13 (2003); and *Enbridge Pipelines*, 100 FERC ¶ 61,260 at 61,959 (2002).

[29] *See, e.g., Williams Natural Gas Pipeline Company*, 86 FERC ¶ 61,232 (1999), where the Commission approved a capital structure of 64 percent equity and 36 percent debt.

developing rates for Williams Natural Gas Company.[30] BP further argues that the Commission erred by approving a 12 percent equity return instead of a 9.41 percent equity return, which BP asserts would result from application of the DCF methodology usually employed by the Commission. BP asserts that the only precedent for approval of a 12 percent equity return for Entrega is the 14 percent equity return approved for San Patricio Pipeline (San Patricio).[31] However, BP asserts that *San Patricio* is bad precedent because the Commission deviated in that case from its usual practice of using a DCF methodology.

35. Entrega notes that *San Patricio* was not cited in the Commission's August 9 Order. Entrega also asserts that application of the DCF methodology would support the 12 percent equity ratio proposed by Entrega and approved by the August 9 Order.

**Commission Response**

36. As stated in the August 9 Order, Entrega's proposed 12 percent return on equity is well within the range allowed by the Commission for other recent new pipeline infrastructure proposals. For example, the proceedings in *Corpus Christi LNG, L.P., and Cheniere Corpus Christi Pipeline Company (Cheniere)* [32] and *Columbia Gas Transmission Corporation and Hardy Storage Company, L.L.C. (Hardy Storage)* [33] involved the creation of new legal entities. We found that a 14 percent rate of return on equity was reasonable for both Cheniere and Hardy Storage as new pipeline entities, taking into account Cheniere's 50 percent equity/50 percent debt capital structure and Hardy Storage's proposed 30 percent equity/70 percent debt capital structure.[34] Entrega's proposed 12 percent equity return is sufficiently lower than Cheniere's and Hardy Storage's equity return to appropriately reflect the fact that Entrega's capital structure has a relatively thick (65 percent) equity ratio compared to Cheniere's and Hardy Storage's capital structures.

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[30] *Citing Williams Natural Gas Company*, 77 FERC ¶ 61,277, *order on reh'g*, 86 FERC ¶ 61,232 (1999).

[31] *Citing San Patricio Pipeline*, 112 FERC ¶ 61,101 (2005).

[32] 111 FERC ¶ 61,081 (2005).

[33] 113 FERC ¶ 61,118 (2005)

[34] *Cheniere*, 111 FERC ¶ 61,081 at P 33; *Hardy Storage*, 113 FERC ¶ 61,118 at P 46.

<u>The Commission orders</u>:

(A) Entrega's request for rehearing is granted and its alternative request for clarification is dismissed as moot.

(B) BP's request for rehearing is denied.

(C) New Jersey Resources Corporation's motion seeking late intervention is denied.

By the Commission.

( S E A L )

Magalie R. Salas,
Secretary.